

OEA/Ser.L/V/II  
Doc. 34  
1 March 2021  
Original: Spanish

**REPORT No. 30/21**  
**PETITION 2016-13**  
REPORT ON INADMISSIBILITY

FERNANDO VASQUEZ BOTERO AND OTHERS  
COLOMBIA

Approved electronically by the Commission on March 1, 2021.

**Cite as:** IACHR, Report No. 30/21, Petition 2016-13. Inadmissibility. Fernando Vasquez Botero and others. Colombia. March 1, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Eduardo Lopez Villegas
<b>Alleged victim:</b>	Fernando Vasquez Botero and twenty-three other people <sup>1</sup>
<b>Respondent State:</b>	Colombia
<b>Rights invoked:</b>	Articles 8 (fair trial), 21 (property), 25 (judicial protection) and 26 (progressive development of economic, social and cultural rights) of the American Convention on Human Rights <sup>2</sup> in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	December 10, 2013
<b>Notification of the petition to the State:</b>	May 26, 2016
<b>State's first response:</b>	November 14, 2017
<b>Additional observations from the petitioner:</b>	January 24, 2018
<b>Additional observations from the State:</b>	October 29, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument of ratification deposited on July 31, 1973)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception of Article 46.2.a) of the American Convention is applicable
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

<sup>1</sup> The following people are named in the petition as alleged victims: (1) Fernando Vasquez Botero; (2) Jaime Moreno Garcia; (3) Jaime Alberto Arrubla Paucar; (4) Enrique Gil Botero; (5) Mauro Jose Antonio Solarte Portilla; (6) Ines Sofia Hurtado Cubides; (7) Augusto Leon Restrepo Ramirez; (8) Nancy Yanira Muñoz; (9) Flavio Augusto Rodriguez Arce; (10) Nicolas Bechara Simanca; (11) Alier Eduardo Hernandez Enriquez; (12) Pedro Rafael Lafont Pianeta; (13) Rafael Enrique Ostau de Lafont Pianeta; (14) Narces Lozano Hernandez; (15) Flor Angela Torres de Cardona; (16) Maria Gloria Ines Segovia Quintero; (17) Alvaro Echeverry Uruburu; (18) Clemencia Robledo de Trejos; (19) Eduardo Lopez Villegas; (20) Patricia Elizabeth Murcia Paez; (21) Maria Estella Pena de Mendez; (22) Luz Estella Mosquera de Meneses; (23) Luis Fernando Alvarez Jaramillo; and (24) Jesael Antonio Giraldo Castaño.

<sup>2</sup> Hereinafter "the American Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner requests the IACHR to declare Colombia internationally responsible for the violation of the human rights of the twenty-four alleged victims, by virtue of the adoption of a constitutionality judgment by the Constitutional Court which, having imposed a maximum level for the highest pensions of the public sector, allegedly entailed a subsequent reduction or “recalculation” of the amounts of their own monthly pensions.

2. The twenty-four alleged victims held some of the highest offices in the different branches of public power of Colombia,<sup>4</sup> and after finalizing their service, they obtained the recognition of their respective retirement pensions, under the special legal and regulatory pension regimes corresponding to the particular situation of each one of them, mainly the regimes established in Law 4 of 1992 and Decree 546 of 1971. In all cases, the amount of the monthly pensions was calculated based on the level of salaries of their last period of public service, and it was high enough for them to be ranked at the highest level of public pensions in Colombia. As they state in the petition, they obtained *“the right to a pension according to the usual international standards, which grant them monthly payments objectively proportional to, and calculated in accordance with, the high State dignity with which they were bestowed”*. The petitioner explains that based on that high value of their monthly pensions, the alleged victims have accessed a *“standard of living, which has resulted for nearly all of them, in their being the main support of their extended families, the providers of their children, daughters-in-law and grandchildren, or in the support for the educational tuition of their close relatives.”*

<sup>4</sup> The last positions held by the alleged victims, after which they received their retirement pensions, were the following: (1) **Fernando Vasquez Botero** was Justice of the Labor Chamber of the Supreme Court of Justice, and obtained his pension recognition by means of Resolution 0955 of January 25, 2004 of the National Social Security Fund (CAJANAL); (2) **Jaime Moreno Garcla** was Justice of the Second Section of the Council of State, and obtained his pension recognition by means of Resolution 007591 of March 25, 2010 of the Social Security Institute; (3) **Jaime Alberto Arrubla Paucar** was Justice of the Civil and Agrarian Chamber of the Supreme Court of Justice, and obtained his pension recognition by means of Resolution No. 04449 of February 16, 2012 of the Social Security Institute; (4) **Enrique Gil Botero** was Justice of the Third Section of the Council of State, and obtained his pension recognition by means of Resolution No. 04239 of February 11, 2010 of the Social Security Institute; (5) **Mauro Jose Antonio Solarte Portilla** was Justice of the Criminal Chamber of the Supreme Court of Justice, and obtained his pension recognition by means of Resolution No. 07389 of CAJANAL; (6) **Ines Sofia Hurtado Cubides** was Contentious-Administrative Deputy Attorney-General before the Council of State, and obtained her pension recognition by means of Resolution No. 016246 of December 11, 1998 of CAJANAL; (7) **Augusto Leon Restrepo Ramirez** was Representative at the Chamber of Representatives of the Congress of the Republic, and obtained his pension recognition by means of Resolution No. 000503 of July 15, 1998 of the Social Welfare Fund of the Congress of the Republic; (8) **Nancy Yanira Muñoz** was Deputy Attorney-General before the Supreme Court of Justice – Criminal Chamber, and obtained her pension recognition by means of Resolution No. 007778 of March 1, 2011; (9) **Flavio Augusto Rodriguez Arce** was Justice of the Chamber of Civil Service and Consultation of the Council of State, and obtained his pension recognition by means of Resolution No. 13748 of June 25, 2003 of CAJANAL; (10) **Nicolas Bechara Simanca** was Justice of the Civil and Agrarian Chamber of the Supreme Court of Justice, and obtained his pension recognition by means of Resolution No. 0026767 of December 15, 2003; (11) **Alier Eduardo Hernandez Enriquez** was Justice of the Third Section of the Council of State, and obtained his pension recognition by means of Resolution No. 25612 of June 1, 2007 of CAJANAL; (12) **Pedro Rafael Lafont Pianeta** was Justice of the Civil and Agrarian Chamber of the Supreme Court of Justice, and obtained his pension recognition by means of Resolution No. 10331.98 of September 29, 1998 from CAJANAL; (13) **Rafael Enrique Ostau de Lafont Pianeta** was Justice of the First Section of the Council of State, and obtained his pension recognition by means of Resolution No. 042103 of November 16, 2011 of the Social Security Institute; (14) **Narces Lozano Hernandez** was Deputy Attorney-General for the Disciplinary Chamber, and obtained his pension recognition by means of Resolution No. 29711 of December 4, 2000; (15) **Flor Angela Torres de Cardona** was Deputy Attorney-General before the Supreme Court of Justice – Criminal Chamber, and obtained her pension recognition by means of Resolution No. 011318 of September 13, 1999 of CAJANAL; (16) **Maria Gloria Ines Segovia Quintero** was Deputy Attorney-General for the Military Forces, and obtained her pension recognition by means of Resolution No. UGM 000972 of July 13, 2011 of CAJANAL; (17) **Alvaro Echeverry Uruburu** was Senator of the Republic, and obtained his pension recognition by means of Resolution No. 012526 of October 20, 1998 of CAJANAL; (18) **Clemencia Robledo de Trejos** is the surviving spouse of Silvio Fernando Trejos Bueno, Justice of the Civil and Agrarian Chamber of the Supreme Court of Justice, and obtained the recognition of her survivor’s pension by means of Resolution No. 55817 of December 3, 2007 of CAJANAL; (19) **Eduardo Lopez Villegas** was Justice of the Labor Chamber of the Supreme Court of Justice, and obtained his pension recognition by means of Resolution No. 019944 of June 14, 2011 of the Social Security Institute; (20) **Patricia Elizabeth Murcia Paez** was Deputy Attorney General for Human Rights, and obtained her pension recognition by means of Resolution No. 035526 of July 31, 2008 of the Social Security Institute; (21) **Maria Estella Pena de Mendez** was Contentious-Administrative Deputy Attorney-General before the Council of State, and obtained her pension recognition by means of Resolution No. 008835 of August 18, 1995 of CAJANAL; (22) **Luz Stella Mosquera de Meneses** was Justice of the Superior Judiciary Council, and obtained her pension recognition by means of Resolution No. 035526 of July 31, 2008 of the Social Security Institute; (23) **Luis Fernando Alvarez Jaramillo** was Justice of the Chamber of Civil Service and Consultation of the Council of State, and obtained his pension recognition by means of Resolution No. 035526 of July 31, 2008 of the Social Security Institute; and (24) **Jesael Antonio Giraldo Castaño** was Justice of the Superior Judiciary Council, and obtained his pension recognition by means of Resolution No. 30676 of June 27, 2006 of CAJANAL.

3. It is claimed that such standard of living was, however, “*severely altered*” due to the adoption of judgment C-258 of 2013 by the Constitutional Court, in which, after ruling on a constitutional complaint filed against Law 4 of 1992 and its regulatory norms, a maximum limit was established for the pension allowances of the public sector, which was significantly lower than that which the twenty-four persons listed by the petitioner had been receiving. Against this constitutional judgment, the petitioners raise numerous allegations, namely:

(i) The Constitutional Court acted without competence because in constitutionality control matters its jurisdiction is of a general and abstract nature, and it cannot rule on concrete cases. However, in judgment C-258 of 2013 the Court, in addition to abstractly ruling on the constitutionality of Law 4 of 1992, “*exerted [its jurisdiction] to concretely determine the existence and amount of acquired pension rights, not just within the accused legal regime, but also within the special regime for the judiciary. The Constitutional Court in judgment C-258 of 2013 adopted particular and concrete decisions regarding the conduct of the victims and their pension rights, countering the nature of public constitutionality judgments which may only contain general, impersonal and abstract decisions.*” For this reason, in the petitioners’ view, the Court disregarded the constitutional distribution of competences set forth in the Colombian internal legal system.

This allegedly irregular exercise of the competence of the Court transpires, in the words of the petitioners, in the following aspects of the content of the constitutionality ruling which is being questioned:

Judgment C-258 of 2013, was oriented toward a main purpose, beyond that of establishing the constitutionality of the provisions that regulate a practically extinct transitional regime: to put the finances of the State in order redistributing pension expenses, and for that purpose it incurred in the following: a) It judged the behavior of the victims, as if they were the only ones responsible for the complex series of acts that starts in the pension petition and finalizes in the recognition of the pension by the State – through administrative or judicial channels-, and designated almost all of them as a fraud against the Law, or as an abuse of their rights, and gave all of them the treatment which the legislation reserves for said conduct; b) It ruled specifically on the existence and amount of the victims’ acquired rights, in establishing the readjustment and reliquidation of their pensions; c) It acted, and ordered the pension administrators to act, disregarding the legally established procedures, so as to affect pension rights; d) It extended its decisions to other different rights, pensions under other special regimes, which were outside the object of the constitutionality procedure, namely Law 4 of 1992; and e) It ordered the resources obtained in this fashion to be redistributed among those most in need.

In that same sense, petitioners claim the alleged victims’ right to a hearing was disregarded within the constitutional proceedings, since they were not expressly summoned to participate in the procedure and to intervene, unlike different State bodies and trade organizations who were indeed summoned. This, “*even though [the Court] had accurate knowledge as to the existence of how many persons were the bearers of the private assets of social security pensions over which decisions would be adopted, ordering an automatic readjustment or a reliquidation of the allowances, and in particular of the number of pensioners which would be affected by the measures taken at the resolution stage*”. They were not notified either of the existence of the proceedings, nor were they given the right to act in the procedure by means of a legal representative, despite the fact that as a consequence of the judgment “*their private assets, their social security pensions, which they enjoyed with the full and reasonable certainty of having accessed them in accordance with the Law, were going to be disposed of*”. For the same reason, the alleged victims did not have the opportunity either to request evidence, although this was necessary to establish the factual grounds which would support the Court’s decision. This supposed violation of the right to defense and to a hearing, according to the petitioners, stems from the fact that the Constitutional Court disregarded the legal procedure that governs constitutional complaints, and exerted a wrongful review upon individual and concrete situations consolidated under the legal regime it was called upon to examine, disregarding at the same time the competence of the legislator in the field of pension regimes in Colombia.

(ii) The Court projected retroactively the interpretation it carried out in judgment C-258/13 so that it would affect acts of pension granting which had already been adopted beforehand, via administrative or

judicial paths, *“in such a manner as to substitute, years later, the prevailing doctrine under which those rights had been recognized. The pensions that were granted over the two prior decades countering the new posture were declared to be not granted in accordance with the Constitution and the Law.”* With this, the petitioners assert, acquired pension rights, which had been consolidated for their bearers, were affected.

(iii) The Court decided without having the necessary evidentiary grounds, since it acted as an ordinary judge and examined the conduct of the actors of the pension system, yet in the constitutional proceedings there was no *“evidentiary stage to determine individual conducts, whose appraisal would set the grounds for the affectation caused upon them”*; it also proceeded to rule that the conduct of the more than one thousand bearers of these high pensions was illegal, without having the factual or legal elements necessary to reach such a conclusion, and incurring in unjustified generalizations.

(iv) By setting a roof for the pensions of the public sector and ordering their reliquidation, the Court incurred in a confiscation of private property, that is, of the amounts that exceeded such maximum limit, which *“can only proceed after prior declarations of public interest from the legislator; or individually, upon the pensioner’s declaration of culpability, so as to eliminate the possibility of there being a pre-existing acquired right, by proving the pension has been obtained by means of fraud to the Law or with abuse of the right”*. On the contrary, in order to carry out such alleged dispossession of the victims’ pension rights, *“the Constitutional Court overrode the applicable legal procedures to revise pensions (...) and ordered automatic revisions which are incompatible with the national legal regime, countering the res judicata force of prior rulings and the firmness of definitive administrative acts”*. They also emphasize that the affectation of the value of the pension allowances of the alleged victims constitutes a violation of their right to private property under the American Convention.

(v) The judgment lacks sufficient motivation in aspects such as the unconstitutionality of the pensions which surpass the limits indicated therein, the readjustment of the pensions that are over the maximum level set forth in the judgment, the automatic readjustment of the pensions consolidated under special legal regimes which differ from Law 4 of 1992, or the extension of the Constitutional Court’s competence to review such special legal regimes.

(vi) The reputation and dignity of the alleged victims was affected when the obtention of their pensions was branded as an illegal or fraudulent process in general terms, *“without making any argumentative effort to distinguish their situation from that of the plaintiffs, but rather on the contrary suggesting that both groups incurred in the same misconduct, for which reason they were to receive the same treatment: the reduction of their pensions.”* In this sense, the petitioner clarifies that all of the alleged victims obtained the recognition of their pensions by means of administrative acts or judicial rulings which have not been judicially contested or been the target of lawsuits, and that none of them have been accused through criminal complaints of having obtained their pension by criminal or fraudulent means or abusing their rights. In this line, the petitioner asserts that *“judgment C-258 of 2013, without allowing for contradiction or defense by the victims, assumed that their pension rights were not obtained in accordance with the Law, thus making sure that against that conclusion the victims would be deprived of any means of legal defense.”* Likewise, it is claimed that the subsequent reduction in the amount of the pension allowances constituted a regressive measure, incompatible with the mandate of progressive development of economic, social and cultural rights enshrined in Article 26 of the Convention.

(vii) The life plan of the alleged victims was affected, since it had already been consolidated based on a high level of income on account of their pension allowances.

4. As for the requirement of exhaustion of domestic remedies, the petitioner explains that in Colombia there are no ordinary domestic remedies to challenge the decisions of the Constitutional Court, for which reason the exception set forth in Article 46.2.a) of the American Convention is applicable. In this regard the petitioner also points out that the annulment remedy against constitutionality judgments is not a suitable path, since it must be filed before the adoption of a judgment and only for extremely restricted causes.

5. The petitioner annexed abundant documentary evidence to the petition, regarding the individual pension status of each one of the twenty-four alleged victims, including administrative acts, judicial

decisions, bank balance certifications, payment receipts, extra-procedural declarations, and other various documents. The IACHR notes that the petitioners do not accompany these documents, which amount to two hundred (200) items and several hundred pages, with even a minimal individual explanation of the pension situation or the reliquidation process of the allowances of each one of the twenty-four alleged victims, but simply restrict themselves to attaching such cumulus of documentation to their petition, refraining from indicating the content, the pertinence or the implications of each one of such documents with regard to the particular situation of each alleged victim.

6. In spite of this, based on this documentation, the IACHR preliminarily observes that the pension allowances of these persons were not reduced directly by the Constitutional Court in the contested judgment, but after the adoption of said ruling, by the respective pension regime administrators, pursuant to the orders and guidelines set forth in the judgment, which limited itself to calling upon the pension administrators to carry out a revision of the pensions granted under Law 4 of 1992, and set a deadline for that process. The Commission also notes that the amounts of the pension allowances of these twenty-four persons are all within a high level, both before and after their reliquidation pursuant to the Court's ruling, and correspond to the maximum legally admissible value for pensions in the Colombian public sector.

7. The State, in its response, makes some clarifications on the factual framework of the petition, and afterward requests the IACHR to declare it inadmissible since it is asking the Commission to act as an international appeals tribunal with regard to the Colombian pension regime, and also for its lack of characterization of possible violations of the American Convention.

8. Firstly, the State specifies in detail the pension situation of each one of the alleged victims as of the date of its response brief. From the information provided by the State, the IACHR highlights that: (i) in several cases the adoption of the ruling by the Constitutional Court implied no change whatsoever in the level of pension allowances received, since these pensions were declared to be in accordance with the law after their review pursuant to the judgment by the respective pension administrators; (ii) in some cases there was a reliquidation of the pension allowances, after the adoption of the decision by the Court, by the corresponding administrators, so as to adjust their value to the maximum limits admitted by judgment C-258/13; and (iii) in all cases, the alleged victims currently receive, even after the adoption of the ruling by the Constitutional Court and of the reliquidations which took place, pension allowances of high monetary value, the amount of which fits without exception within the maximum range of value allowed by the Constitutional Court in the country, which results in the alleged victims being the beneficiaries of pension allowances of the highest legally admissible amounts for the pensions of the Colombian public sector<sup>5</sup>.

9. The State proceeds next to summarize in detail the content of judgment C-258/13, and to explain that this ruling initially referred to the pension regime enshrined in Law 4 of 1992, but that later, by means of judgment SU-230 of 2015 of the same Constitutional Court, the reasoning and scope of the former judgment was extended to all of the pension transitional regimes of the Colombian public sector. The State also explains that in compliance with judgment C-258/13 there was a subsequent adjustment of the pensions of numerous former Colombian public officials, in order to impose upon them the maximum limit of 25 monthly minimum wages established in the Constitutional Court's ruling, beginning in July 2013.

10. Having given the above explanation in meticulous and extensive terms, the State requests that the IACHR declare that the petition is inadmissible for having resorted to the Commission as an international appeals tribunal:

the aim of the petitioners in resorting to the Inter-American System of Human Rights Protection (IASHRP), is for the Commission to act as a higher instance court, disregarding the decision issued with full observance all legal safeguards by the Colombian Constitutional Court, and entering into the review of the decisions adopted within the Colombian legal

---

<sup>5</sup> Considering the average exchange rate of 2017 (ColP\$2951,00 for US\$1,00), the pension allowances of the alleged victims were all above US\$5800 per month.

system, mainly the factual and legal grounds which led to the adoption of Constitutionality Judgment C-258 de 2013.

For the State, given that this ruling was adopted with full respect for the due process guarantees and other international standards, it is encompassed by a presumption of legality, constitutionality and conventionality, and it is shielded by the legal figure of constitutional *res judicata*. Colombia also claims that the content of the Constitutional Court's judgment meets the parameters set in the jurisprudence of the Inter-American System on the right to a pension, and it develops this substantive argument in a significant degree of detail, based on different decisions both by the IACHR and the Inter-American Court about the substantive subject-matter raised by the petitioners on the merits. In connection with the above, the State explains several topics dealing with Colombian Constitutional law –including the clause of the Social State grounded on the Rule of Law (*Estado Social de Derecho*), the principles which govern the General Social Security System for Pensions and the right to social security in the Colombian Constitution, the concept of legitimate expectations, and the status of acquired rights–, all of which would be relevant for the study of the merits of the petition. The State insists that the different charges of unconventionality raised by the petitioners were already decided domestically, since they were also raised and resolved throughout the constitutional proceedings which gave rise to the adoption of judgment C-258/13: *“The foregoing arguments will make it possible to prove that the petitioners’ allegations in this case, coincide with the legal issue that was analyzed and reviewed by the national jurisdiction, through duly motivated and definitive rulings. In addition, within such rulings, the allegations of the alleged victims’ representatives have already been dismissed in a justified manner”*.

11. In connection with the above, the State argues that the reasoning of the Constitutional Court was based on, inter alia, decisions on the merits by the IACHR in similar cases. On these grounds the State concludes that *“judgment C-258-13 is not one of the hypotheses that activate the Commission’s competence to declare a petition admissible and decide on its merits, insofar as: i) the decision was adopted with full observance of the due process guarantees; ii) it did not breach any other right safeguarded by the Convention; iii) it was validated on several occasions by domestic courts, and iv) it is duly motivated in both factual and legal terms”*. For these reasons, Colombia claims that should the IACHR proceed to review such ruling, it would be acting as an appeals court with regard to a decision that has not triggered any of the factors that activate its competence.

12. In close connection to the above, the State holds that the petition does not characterize potential violations of the American Convention. This request is grounded on substantial reasons, related to (i) the absence of violation of the right to private property –in relation to the notion of acquired rights in the field of pensions and non-retroactivity in the application of the Law and jurisprudence–, (ii) the non-regressive nature of the measure from the standpoint of the duty of progressive development of the ESCER under the Inter-American instruments, and (iii) respect for the due process guarantees in cases of constitutionality judgments which affect pension rights.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

13. The petition directs its claims against a constitutionality judgment issued by the Constitutional Court of Colombia. It is clear, as stated by both parties, that no ordinary remedies are available to contest decisions issued in exercise of the constitutional review powers established in Article 241 of the Colombian Political Constitution, since these are definitive decisions, adopted with an *erga omnes* scope, by the highest tribunal of the Colombian constitutional jurisdiction, and are shielded by the constitutional *res judicata* effect. Furthermore, the annulment grounds for constitutionality judgments by the Colombian Constitutional Court are of an extremely restricted nature and are only exceptionally admissible, and in any case neither the petitioner nor the alleged victims resorted to such extraordinary annulment remedy. For these reasons, in this case the exception to the duty of exhausting domestic remedies set forth in Article 46.2.a) of the American Convention is applicable, since there are no suitable remedies in the domestic legal system to challenge the decision which is claimed to have violated human rights.

14. The judgment was adopted by the Court on May 7, 2013. Taking into account the complexity and extension of this decision, and since the petition was received in the Executive Secretariat of the IACHR on

December 10, 2013, the Commission considers that the latter was submitted within a reasonable time, in light of the provisions of Article 32.2 of the Rules of Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

15. The Inter-American Commission has adopted a uniform and consistent position, in the sense that it is indeed competent to declare a petition admissible and decide on its merits in cases related to domestic judicial proceedings which may violate the rights safeguarded by the American Convention. *Contrario sensu*, when a petition is addressed against the content, the evidentiary assessment or the judicial reasoning set forth in a definitive judicial decision, adopted respecting due process and the other guarantees enshrined in the Convention, the IACHR lacks competence, since it is not empowered to carry out a new assessment, at the Inter-American level, of what was decided at the domestic level by national judges in exercise of their legitimate attributions and within the sphere of their own jurisdiction.<sup>6</sup>

16. In the instant case, the petitioner requests the IACHR to review the content of a constitutionality judgment adopted by the highest court of Colombia, calling into question both the judicial reasoning set forth therein, and the evidentiary foundations of the ruling, as well as its legal support on the Political Constitution and Colombian Law, and on the Inter-American human rights instruments. The petitioner's complaints target the very sense of this judicial ruling, and seek a new assessment of the evidence gathered throughout the proceedings, as well as a critical examination of its content and sufficiency. This claim, which seeks a new review of what was already resolved by the Constitutional Court exceeds, therefore, the intrinsic competence of the IACHR and must be declared inadmissible.

17. In close connection to the above, the Inter-American Commission considers that the alleged facts do not *prima facie* characterize possible violations of the American Convention, which would justify a pronouncement by the IACHR on judgment C-258/13 of the Constitutional Court. This conclusion has been reached after a detailed consideration of the arguments of the petitioner summarized in paragraph 3 of the present report, for the following concrete reasons:

(i) The fact that the Constitutional Court decides in its rulings on general situations or on particular and concrete cases, does not have, on principle, any incidence upon the exercise of the rights enshrined in the American Convention, since it is a judicial authority with full autonomy to modulate the scope of its own decisions, in the exercise of its own constitutional attributions, provided that the judicial guarantees set forth in the instruments that govern the Inter-American System are respected. That being said, the IACHR observes that in judgment C-258/13 the Court *did not* decide on concrete and specific cases, as the petitioners claim, but rather decided in general and impersonal terms on different categories of the so-called "mega pensions", without entering into the evaluation of any of the particular situations of the alleged victims, limiting itself to ordering the domestic administrative authorities, and the pension regime administrators, to make a subsequent recalculation of the allowances which surpassed a given amount, in accordance with certain rules outlined, in an equally general and impersonal manner, by the Court itself in its judgment. This conclusion is reached by the Commission after a close reading of the very content of the ruling which is contested in the petition, which is public in nature and has been provided for the casefile by the parties.

As a direct consequence of the above, the IACHR considers that it has not been proven that there was a breach of the right to a hearing or of the right of defense of any of the alleged victims, since their particular and concrete cases were not the subject-matter of the decision by the Constitutional Court in judgment C-258/13. Notwithstanding the above, for the Commission it is clear that prior to the adoption of this judgment, the Court strictly followed the procedural legislation established for the constitutionality proceedings that it conducts – regulated by Decree 2067 of 1991–, procedure which establishes a phase of intervention by authorities and citizens, in the course of which numerous public and private Colombian entities indeed intervened before the Court and expressed their position on the issue of the official sector "mega-pensions"; said interventions were

<sup>6</sup> IACHR, Report No. 122/19. Petition 1442-09. Admissibility. Luis Fernando Hernandez Carvajal and others. Colombia. July 14, 2019; Report No. 116/19. Petition 1780-10. Admissibility. Carlos Fernando Ballivian Jimenez. Argentina. July 3, 2019, para. 16; Report No. 111/19. Petition 335-08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019, para. 13.



clearly summarized and expressly addressed by the Court in the judgment that is being contested herein. In addition, as the State points out, none of the alleged victims intervened during this procedural phase before the Constitutional Court, although they had the opportunity to do so.

(ii) Since the Court did not refer in its judgment to the particular and concrete situation of the alleged victims, it has not been proven in the petition, either, that it affected their acquired pension rights or their right to private property. On the contrary, although the pension situation of the twenty-four persons listed in the petition as alleged victims is diverse (and should have been clearly explained for each one of them by the petitioners), it is observed *prima facie* that none of these alleged victims saw their pension allowance altered directly by the decision of the Constitutional Court: those allowances which were actually recalculated or reduced, were altered by virtue of subsequent decisions adopted by the administrators of their respective pension systems, which have not been duly explained or presented by the petitioners before the IACHR. Given that it was not proven, even in a preliminary manner, that the Constitutional Court with judgment C-258/13 varied or directly affected the pensions of the alleged victims, the arguments related to the affectation of acquired rights by virtue of an allegedly retroactive projection of the judicial ruling in question, to the alteration of the life plan or the right to social security of the alleged victims, or to an alleged regression in the enjoyment of economic, social and cultural rights, shall not be admitted. For this same reason, it has not been proven that the reputation or dignity of any of these twenty-four persons has been affected by the Constitutional Court's judgment, since it did not in any way refer to them in particular and specific terms.

(iii) Additionally, the IACHR observes that the petition has not satisfied the minimum argumentative burden required to characterize, at least preliminarily, potential violations of the American Convention concerning the pension situation of the alleged victims in specific terms. Indeed, beyond contesting judgment C-258/13 of the Constitutional Court, when referring to the individual cases of the twenty-four persons allegedly affected in their rights, the petitioners restrict themselves to attaching to their claim a hefty amount of documentation –composed of over 200 items–, yet without explaining the extent of this affectation which was allegedly caused to each one of these persons by reason of the application of the judgment. There is not even a minimum exposition which provides any clarity whatsoever on these voluminous documents are to be read or interpreted, despite their evident complexity, for which reason the IACHR *a priori* cannot consider possible violations of the Convention to have been duly characterized in that sense.

17. After analyzing the information provided by the parties, for the reasons set forth above, the Commission concludes that the allegations by the petitioner have no *prima facie* elements to characterize possible violations of the American Convention in the terms of Article 47.b of such instrument.

## VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; to publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the first day of the month of March, 2021. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.